

EXHIBIT T

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
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4 WSOU INVESTMENTS, LLC d/b/a)
5 BRAZOS LICENSING AND) C20-01878-BJR
6 DEVELOPMENT,) SEATTLE, WASHINGTON
7 Plaintiff,) September 30, 2021
8 v.) 9:00 a.m.
9 F5 NETWORKS, INC.,) Telephonic Motion
10 Defendant.) Hearing
11

12 VERBATIM REPORT OF PROCEEDINGS
13 BEFORE THE HONORABLE BARBARA J. ROTHSTEIN
14 UNITED STATES DISTRICT JUDGE
15

16 APPEARANCES:

17 For the Plaintiff: Hershy Stern
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1 THE CLERK: United States District Court for the
2 Western District of Washington is now in session. The
3 Honorable Barbara J. Rothstein presiding.

4 This is the matter of WSOU Investments versus F5 Networks,
5 Cause No. 21-123, assigned to this court.

6 Would counsel please make their appearances for the
7 record?

8 MR. STERN: Good morning, Your Honor. This is Hershy
9 Stern from Kasowitz Benson Torres, for plaintiff WSOU
10 Investments. Thank you.

11 THE COURT: Good morning.

12 MR. AL-SALAM: Good morning, Your Honor. This is
13 Ramsey Al-Salam from Perkins Coie for defendant F5 Networks.
14 And I'm accompanied by Shane Brun and Brent Ray from Keen &
15 Spalding, who I will let make separate appearances.

16 THE COURT: Can you spell your name, Mr. Al-Salam?

17 MR. AL-SALAM: A-L-S-A-L-A, M as in Mary.

18 THE COURT: Got it.

19 MR. BRUN: Hello, Your Honor. This is Shane Brun
20 with King & Spalding, on behalf of F5.

21 THE COURT: Okay.

22 MR. RAY: Good morning, Your Honor. This is Brent
23 Ray, also of King & Spalding, for F5.

24 THE COURT: Okay. Okay.

25 And let me start with you, Mr. Stern. I'm sure counsel

1 have spoken. So what is left that you still haven't gotten
2 that you want, Mr. Stern?

3 MR. STERN: Sure. Thank you very much, Your Honor.
4 Simply put, almost everything. We have --

5 THE COURT: Well --

6 MR. STERN: Unfortunately.

7 WSOU has propounded document requests and interrogatories
8 back in April. Since then, defendant F5 have interposed
9 their objections and responses. And we've met and conferred
10 no less than three times, with a bunch of letters and e-mails
11 going back and forth. To date, which is now five months
12 since then, defendant F5 has produced 150, quote-unquote,
13 technical documents, most of which make up publicly available
14 user manuals and white pages off of the F5 website. That's
15 with respect to technical documents.

16 In addition, we were -- we've been informed that we will
17 receive, at some point, source code for certain accused
18 products. However, we were also recently informed that
19 notwithstanding that it's been five months, that there is
20 going to be an issue with the production of source code for
21 one of the products, because it's located in Israel, and
22 there's some export control laws that may apply. So we've
23 been given no information when those issues will be resolved
24 and when we'll receive that source code.

25 With respect to the financial documents that F5 has

1 represented that they will produce, we've received one
2 document. That document has merely revenue information, by
3 year, for only a portion of the damages, period, from about
4 2014 through about 2021, I believe. But the patents expire
5 years from now. So we have received no information about
6 projections.

7 Indeed, with respect to that financial document, we don't
8 even have the number of units that are sold, the number of
9 users, gross profits as opposed to net, operating costs,
10 things like that. All that type of information, we
11 understand, to be basic -- part of the basic technical and
12 financial productions that we were supposed to receive.

13 On top of it, there's an overarching -- there is an
14 overarching dispute with respect to the definition of accused
15 products, and what F5 believes should be -- that should be
16 limited to. There are two categories under that realm. One
17 would be those products that WSOU has specifically identified
18 as infringing, as part of -- or in its
19 preliminary-infringement contentions.

20 And then the second subcategory would be within the
21 definition of accused products in the discovery requests that
22 WSOU has propounded. In other words, in our discovery
23 requests, and in the preliminary contentions, we said, you
24 know, we're seeking discovery over F5's accused device
25 products or instrumentalities, that, for example, would have

1 the functionality of active load balancing. Because we
2 believe that's the subject of one of the five patents at
3 issue.

4 F5 has taken the position that they are not -- that we're
5 not entitled to such discovery over those types of products,
6 because we didn't identify it. We believe we've identified,
7 sufficiently enough, and the case law that we cited for F5
8 shows that courts around the U.S. have found that plaintiffs
9 in patent cases are entitled to discovery over accused
10 products, that are not necessarily identified in the
11 contentions themselves.

12 Now, with respect to those that were identified in the
13 contentions, there's a dispute about which ones were actually
14 identified and what WSOU is entitled to. For example, WSOU
15 has identified the BIG-IP system, and a VIPRIION system. F5
16 has informed us to say, well, that's just the hardware you've
17 identified, and that hardware doesn't have any of the
18 functionality, it's really the software that customers use
19 within that hardware. But that distinction shouldn't be with
20 a difference, because in our contentions you can't run those
21 software modules without the BIG-IP and VIPRIION systems. So
22 we're entitled to the software.

23 It's difficult, or it's without our control, to have -- to
24 be able to identify every piece of software by name.

25 Notwithstanding, F5 doesn't even want to tell us the name of

1 the software, of the pieces of software within the products,
2 which is the subject of an interrogatory request.

3 Beyond that, there are almost, I believe, seven categories
4 of documents that are the subject of this motion to compel.

5 Those are the technical documents we discussed, the financial
6 documents, including projections, as well as the business and
7 marketing plans. Those all go to damages. As well as
8 consumer and industry demand and awards. That goes to
9 reasonable royalty. Reasonable royalty factors, as well as
10 licensing policies. And the actual licensing royalty and
11 other settlement agreements that would have rates, the rates
12 and the payments with respect to any of the accused products
13 for which F5 has entered into, with either other entities
14 that have patents accused of infringements, or any other
15 deals, or any other --

16 THE COURT: Let me interrupt you for a minute. I
17 assume that these financial documents go to damages; is that
18 correct?

19 MR. STERN: Yes, Your Honor.

20 THE COURT: All right. Just checking.

21 MR. STERN: Of course. Thank you, Your Honor.

22 Beyond that, there's competing products as well, which
23 also goes to the reasonable royalty, as well as
24 non-infringing alternatives. And, then, just basic documents
25 like organizational charts and information about their

1 organizational structure. We're entitled to that information
2 to understand, you know, who has the information relating to
3 these products, and whether we're going to need to depose
4 them in this case. But we haven't gotten anything beyond
5 those 154 documents at this point. So now we're at --

6 THE COURT: Go ahead.

7 MR. STERN: We're at now September 30th, and fact
8 discovery closes January 6th in this case. Thank you, Your
9 Honor.

10 THE COURT: Okay. Mr. Al-Salam, are you the one
11 that's going to speak?

12 MR. AL-SALAM: No, I'm going to have Shane Brun
13 address the issues.

14 Mr. Ray is on the call, just so you know, to address the
15 claim-construction dispute, if the court is going to hear
16 that dispute. And Mr. Ray has another hearing in less than
17 an hour and a half.

18 THE COURT: Well, I can assure you -- I'll let
19 Mr. Ray go -- I have no intention of hearing a
20 claim-construction dispute on a phone call. I think that is
21 not the way I usually handle it. So, Mr. Ray, you can go to
22 your next hearing. Okay?

23 MR. RAY: Thank you, Your Honor.

24 MR. AL-SALAM: So, Mr. Brun will handle the discovery
25 hearing. Thank you, Your Honor.

1 THE COURT: Okay. Mr. Brun, take it away.

2 MR. BRUN: Thank you, Your Honor. Shane Brun, King &
3 Spalding, on behalf of F5.

4 And so I'll start from the beginning where Mr. Stern did.
5 And, actually, if you don't mind, Your Honor, since we do
6 have a court reporter making a transcript, keeping a record
7 for us, can I just quickly state for the record, just to
8 address when the requests were served, and Mr. Stern's
9 reference to and counsel's reference to the five-month
10 period? We don't have to go into it now, I'd just like to
11 put it on the record so we have it. Is that okay?

12 THE COURT: Sure.

13 MR. BRUN: Okay. Perfect.

14 So, counsel stated that the original request,
15 interrogatories and requests for documents were served on
16 April 9th. So I'll accept that as the case. At the time
17 there was a different team of lawyers from Mr. Stern's firm
18 handling the case. Through a set of mutual and reciprocal
19 extensions, F5 served its responses to the request for
20 production and interrogatories on June 1st of 2021; and so
21 just about four months ago.

22 After we served those responses where we raised all the
23 objections -- several of which we've identified with respect
24 to what we sent to the court so far -- after we served those
25 responses on June 1st, WSOU waited over five weeks, until

1 July 9th, before claiming any deficiencies in F5's responses.
2 F5 responded to WSOU's July 9th letter, just two business
3 days later, on July 13th, offering to meet and confer with
4 respect to WSOU's complaints about our responses.

5 Then it was more than two weeks, again, until July 30th,
6 until WSOU responded to schedule a meet and confer. And then
7 the first meet and confer between the parties occurred on
8 August 6th. And then since then, Your Honor, our meet and
9 confer -- and I put that in air quotes, because I don't think
10 it was a Rule 37 meet and confer -- over a period of three
11 weeks until August 27th where Mr. -- where counsel felt like
12 we were at an impasse, and we arranged the first court call
13 starting on September 1st.

14 So thank you very much for letting me just put that in.
15 But it basically shows, over the last four months, that two
16 months of the delay were not on F5, but specifically due to
17 WSOU's time in responding to us and raising their issues with
18 our response.

19 THE COURT: Okay. Now that you've cleared that up,
20 how about addressing Mr. Stern's concerns about why you
21 haven't turned over some of the documents?

22 MR. BRUN: Yes, absolutely. And thank you so much
23 for letting me put that into the record. And, so, this is a
24 patent case. And this court, and several other courts who
25 hear a lot of patent cases, have specific rules that set the

1 mete and bounds of the case.

2 So in this case, WSOU identified or served their
3 infringement contentions, identifying their accused products.
4 In response to that, F5 served their non-infringement
5 contentions, in response to the infringement contentions.

6 And then, since then, with respect to the requests that
7 we've received, we have not -- or we have agreed -- and this,
8 again, was in the latest submission in response to the
9 court's request -- notwithstanding the breadth of the
10 request, we've agreed for the accused products, and I've
11 started producing for the accused products, documents that
12 show the operation of the accused features and functionality
13 in the accused products identified in the infringement
14 contentions. And we've also agreed to produce the financial
15 information, that often are the standard productions in a
16 patent case. Sales, revenue, cost of goods sold, and
17 profits.

18 And on one of the issues that counsel just raised -- and
19 it's helpful to understand the structure of F5's products.
20 There is hardware, the BIG-IP and VIPRIION system; it's
21 basically an empty box. And on that box F5 loads its
22 functioning products, which are software modules that do
23 various functions for big corporations. F5's products are
24 part of a computer-networking infrastructure that sit in
25 between, of course, our offices, and the outside world.

1 And so for each stage BIG-IP or VIPRION hardware, there
2 are 10, 15, perhaps 20 different modules, software modules
3 that are on that box. When those boxes are sold with those
4 modules, F5's customers are only interested, usually, in
5 either one or two, or at most, maybe a handful of those
6 modules. And so they get a license key. That's the purchase
7 of the module. They can open that. But they can't use the
8 other modules on the hardware. And so one of the things that
9 I have informed counsel about is F5 tracks and has
10 information relating to sales and revenue for each of the
11 accused modules, and for the BIG-IP and the VIPRION.

12 What F5 does not track and doesn't keep track of, are
13 specific costs, the costs of developing those particular
14 modules, does not keep that information as part of its normal
15 course of its business. But because those are generally
16 required and standard productions in patent cases, we have
17 met with and interviewed F5's internal financial people, and
18 they are -- it's a big list -- but they are in the process of
19 going back and looking at the information that they have, and
20 are doing their absolute best to develop the cost of
21 developing each of the individual modules that have been
22 accused.

23 That process is getting close to complete. And I would
24 expect to have that information, and then we can explain how
25 the information was calculated, and how it was reached,

1 within the next couple of weeks. And then counsel then can
2 depose, or send additional interrogatories, to the extent
3 they have questions about that. But that is information that
4 has to be generated. And so that is in process, and we've
5 agreed to do that.

6 THE COURT: And when you furnish that information, it
7 will come with names of people so they can know who to
8 depose?

9 MR. BRUN: Yes. We have agreed -- and thank you for
10 that question. There was -- we have agreed, in response to
11 an interrogatory that asks for a lot more of -- well, beyond
12 what's required by Rule 26, 34. But we have agreed, for each
13 of the accused products, and the financial information, to
14 provide WSOU a list of three people, identify three people
15 who are knowledgeable about the accused products, and who are
16 knowledgeable about the financial information, we'll include
17 the cost of goods sold and how that was calculated. And we
18 have started to provide that information.

19 We've sent an initial e-mail, because we want to get that
20 to counsel as fast as possible, identifying persons
21 knowledgeable about each of the accused products. For most
22 of those, I believe we've given the three that we've agreed
23 to. For a couple of them, we've given one or two names, but
24 we're in the process of finding more.

25 For the financial people, we have interviews set up next

1 week, with various people from our finance department, and
2 will be providing the names of three people in the financial
3 group that are knowledgeable with respect to, again, the
4 sales and the costs of goods sold for the accused products.

5 THE COURT: Okay. Let me ask you another question.

6 When you talk about modules, I assume that has to do with
7 software, right?

8 MR. BRUN: Correct.

9 THE COURT: So you're not making the distinction that
10 Mr. Stern was worried about, that you would only be turning
11 over those empty boxes and not the software, right?

12 MR. BRUN: Not at all. And on top of that, Your
13 Honor, if I can add -- so, what's relevant, what's at issue
14 in the case, are particular pieces of functionality in each
15 of the modules. So, for example, one of the modules that's
16 accused, in a couple of the cases that have been filed, is
17 the Policy Enforcement Manager, the PEM module. For that
18 module, in WSOU's infringement contentions, there's specific
19 functionality that's accused, as supposedly meeting each of
20 the limitations.

21 So, often, and under the rules, a defendant could just
22 identify documents for those, for that particular
23 functionality, and source code for that particular
24 functionality. We are not parsing it that way.

25 F5 is going to produce the entire code for the Policy

1 Enforcement Manager. Same for the LTM, which is Local
2 Traffic Manager product that's been accused. And the two
3 other modules that's been accused.

4 And we are also producing, Your Honor, if I heard counsel
5 correctly, to say that we haven't agreed to produce documents
6 with respect to hardware, the BIG-IP and the VIPRIION. If you
7 look at their infringement contentions, WSOU's infringement
8 contentions, none of the hardware features are identified as
9 meeting any of the limitations of the patents. We've asked
10 counsel to identify any limitations that they've been alleged
11 to meet. They haven't identified those. But nonetheless,
12 because they have been identified as accused products in the
13 various definitions, we have agreed to produce schematics,
14 other internal documents that show all the features of the
15 hardware products as well. So things that haven't even been
16 identified as meeting the limitations, we are providing that,
17 as well full source code and schematics for the hardware.

18 THE COURT: Okay. And you expect to be able to
19 provide all this information that you have just gone over, by
20 when?

21 MR. BRUN: And so with respect to the technical
22 documents, as Mr. Stern or as counsel mentioned, F5 has
23 produced 150, or so, technical documents. Several of those
24 -- and a lot of those -- it may, in fact, be most that we've
25 produced -- are user manuals, other types of manuals, user

1 guides, that are available through F5's website. A lot of
2 those you have to log into to get.

3 THE COURT: He is obviously talking about something
4 different than that.

5 MR. BRUN: Correct. Correct. And I was getting to
6 it, I was just taking too long. For dozens in that
7 particular production, dozens of the documents are internal,
8 highly confidential, attorneys' eyes only, technical
9 documents that are not publicly available. We produced
10 dozens of those across each of the modules.

11 But because this is a software case, as you mentioned, the
12 source code is really where the proof is in the source-code
13 pudding. And that information, the source code, we are going
14 to be receiving three of the four accused modules within the
15 next few days. As soon as we get that, we will put that on
16 -- we'll go through the procedures, and we will have that
17 ready for review, if not by the end of next week, certainly
18 the week following that; so, the second week in October at
19 the latest.

20 THE COURT: Okay. Well, it sounds like -- I'm just
21 curious, Mr. Brun, have you told this to the plaintiffs?

22 MR. BRUN: Oh, yes. Yes. Many times. Many times.

23 THE COURT: Mr. Stern, why are we here, if you can
24 get all this?

25 MR. STERN: Sorry to interrupt, Your Honor.

1 THE COURT: No. That's the question. Why do you
2 need me?

3 MR. STERN: Sure. So, on the technical-documents
4 side, counsel has explained, or agreed that almost all of the
5 production we've received, out of the 150 documents, are just
6 user manuals. What we're looking for is internal
7 documentation regarding how the source code was created, how
8 it works, the architecture of the source code, how it
9 interacts with the hardware.

10 THE COURT: Well, I realize --

11 MR. STERN: I'm sorry, Your Honor.

12 THE COURT: I realize what he's given you, the
13 150 pages from the website is not what you're looking for.
14 But I heard him say that he's going to be providing you with
15 information on the software, and the functionality. And he's
16 going to be providing you with the names of three people that
17 you can talk to and get this information from. Why isn't
18 that what you're asking for?

19 MR. STERN: Because we've received -- that is what
20 we're asking for. What we've received hasn't been sufficient
21 of the internal documentation, before you get the source
22 code. In other words, our understanding is that when you get
23 the source code, you're getting lines of the actual
24 underlying code.

25 There are, usually in these large companies, documents

1 centrally located, you know, so it's not difficult to find,
2 that actually explain the architecture of the source code and
3 how it works. So we'd like those types of documents.

4 What we've received, aside from the user manuals, are a
5 limited number of presentations.

6 THE COURT: I'm not concerned about what you've
7 received. Okay? I know that what you've received is
8 inadequate. And I think Mr. Brun agreed that it was
9 inadequate, and is now planning to supplement it.

10 So let me switch back to you, Mr. Brun. This
11 architectural information that they're looking for, is that
12 part of what you're going to be turning over in a couple of
13 weeks?

14 MR. BRUN: And so on that point, I believe that some
15 of the architectural-type documents, if they haven't been
16 produced already, I agree with counsel, that some of those
17 may be relevant. The issue with their request is, they're so
18 over-bogged through asking for all documents, and based on
19 their definitions of the accused products, related products,
20 they're really asking for documents relating to every single
21 product or module F5 has. And while we can try to parse
22 their request, and guess at what they're asking for, we have
23 asked them several times, on this particular -- on this
24 request, on the financial-document request, on the
25 marketing-type request, to sit down and talk with us, and

1 tell us what it is they're looking for, narrow their request.
2 And they simply have refused to do that. And I could read
3 you, if it's okay, I can read you the types of requests we've
4 been making, to which they've refused to even talk with us.

5 THE COURT: No, I don't need you to read it to me,
6 because I can see from the requests, Mr. Stern, it's clearly
7 overbroad. You can't say "other specified products." I
8 mean, "related products." They have to be specific. And
9 right now I think they would be limited to what you have set
10 forth as offending products that you have specified. I have
11 a hard time, Mr. Stern, understanding what -- please don't
12 tell me, again, what you've received. I think we all agree
13 that what they've given you thus far is inadequate. But I
14 think they may need some more specificity as to what you want
15 them to turn over. Though they seem to have enough
16 specificity to be turning over quite a bit of material in a
17 couple of weeks.

18 So why don't we do this, counsel: Why don't I set a date,
19 in a couple of weeks, by which defendant will turn over what
20 it considers responsive to plaintiff's request, all the
21 things, the names of the people. I'm not going to be
22 specific about it. But I guess the modules, the software,
23 all of that. And, I don't know -- what would be a good date?
24 I'm looking for a calendar date here. October --
25 October 15th. Can you do it by then? Or the 22nd?

1 MR. STERN: October 15th is fine, Your Honor, with
2 plaintiff WSOU.

3 Your Honor, if I could address some of those points that
4 Your Honor made, to clarify for the record, I'd greatly
5 appreciate it.

6 THE COURT: Well, I was going to suggest, Mr. Stern,
7 before you go through the clarifications, to see if this
8 would be a help to you, that you get what they're turning
9 over, and then after you've had a chance to go through it --
10 and maybe take depositions, that's up to you -- you then see
11 specifically what you haven't gotten that you need.

12 Wouldn't that be a better way to go, than you're trying to
13 list them all now, because you don't know what you're
14 getting. You don't know if you're getting some of the things
15 you're concerned about, right?

16 MR. STERN: Correct, Your Honor, with a minor
17 modification, if I may.

18 So I think what Mr. Brun is saying is that anything that
19 has been identified in the primary infringement contentions,
20 defendant F5 will produce the technical documents, financial
21 documents, and so on, in what they believe is responsive to
22 the request. Two points that I'd like to make. With respect
23 to the specificity of accused devices that have not been
24 specifically identified in the preliminary infringement
25 contentions. We've provided counsel for defendant F5 with a

1 list, five categories that represent the technology in the
2 five patents. And we've asked counsel, we've said: To the
3 extent F5 has a device that has that functionality, we're
4 entitled to the discovery.

5 Those five categories are: Calculating activity factor;
6 generating billing information; resource management; active
7 load balancing; and delivery of targeted information. Those
8 fall within the technology that's being accused, that F5 may
9 have products that they offer, separate and apart from those
10 that are actually identified within the --

11 THE COURT: Let me ask you something, Mr. Stern. And
12 bearing in mind that I am not really very familiar with your
13 case yet, and the various modules that you're talking about,
14 but wouldn't it make more sense to determine whether there
15 are infringements on the ones you specified? And once we
16 know that there are infringements, if indeed there are, then
17 you can go ahead and look at all the other possible products
18 that contain similar software, or modules. And we can do
19 that later on, rather than doing it all at once.

20 I mean, what you're asking for, I assume the answer is
21 going to be, is quite far flung. And it seems a little
22 cart-before-the-horse to care about how many other products
23 actually contain what you're alleging they're infringing,
24 until we know whether it's infringing or not. It seems to me
25 that we should make that determination, with the ones that

1 you have alleged in your complaint, or in your contentions,
2 and with the understanding that if you prevail on these, and
3 these are infringing, you'll get all that information later
4 on. What about proceeding in that manner?

5 MR. STERN: Understood, Your Honor. It was just the
6 instance that we're running up against the close of fact
7 discovery. But if that's what Your Honor wishes, that that's
8 acceptable to proceed.

9 THE COURT: Well, maybe it's a form of bifurcation,
10 then, that would go to damages. Obviously if you prevail and
11 it's found infringing, you would then be entitled to find out
12 how many other of their products are actually infringing,
13 once you know that there are infringing modules and content
14 involved. And we could then reopen fact discovery. I don't
15 know. Mr. Brun, you're being very quiet. But, I would
16 assume defendant would have no objection to proceeding this
17 way, am I right?

18 MR. BRUN: Correct, Your Honor. And I was only being
19 quiet because I didn't want to interrupt counsel or the
20 court. I was listening very carefully. It's early, but I am
21 staying awake.

22 And so with respect to the latter discussion, obviously we
23 would have responses to the definitions of accused products
24 and what counsel has asked for so far. But we don't need to
25 address that now, given your suggested approach. Agree

1 100 percent.

2 THE COURT: Well, I thought you would. I thought you
3 would. But I want to hear from Mr. Stern.

4 Mr. Stern, would that enable you to proceed more
5 expeditiously than, you know, maybe waiting a long time for
6 them to put together all the others, and have a fight about
7 whether it's overbroad or not?

8 MR. STERN: Understood, Your Honor. That is
9 acceptable. I'd like to discuss it with the client. But,
10 yes, to me, we can say that right now. I would like just to
11 discuss it with the client. But, yes, we understand the way
12 the court would like to proceed on this.

13 THE COURT: Well, I think it's beneficial to you,
14 too. Because you will then have, by October 15th,
15 presumably -- presumably -- what you need to work with. And
16 if you don't have it all, I trust that you will let Mr. Brun
17 know and you'll try to work it out. But at least it resolves
18 the overbroad objection and gets you going. Okay?

19 MR. STERN: That makes sense, Your Honor. Thank you.

20 If I may address another issue that the court or counsel
21 for defendant F5 raised. Counsel for F5 has said that WSOU's
22 discovery requests are overbroad, because they seek "all
23 documents concerning." As the court may be aware, and I
24 think all parties here have done is, you know, serve
25 discovery requests with the beginning words of "all documents

1 concerning." Now we understand that it's going to be very
2 difficult to get "all documents concerning." However,
3 usually parties proceed by interposing objections, and then
4 conducting a search by identifying custodians that are likely
5 to have those documents, and then applying search terms,
6 relevant search terms to the custodial documents, as well as
7 centrally located file folders that would have or likely to
8 have such information. We believe that's the appropriate way
9 for defendant F5 to go about producing documents in the
10 matter. And that, we believe, will remedy the issue of "all
11 documents concerning."

12 THE COURT: Mr. Brun?

13 MR. BRUN: Yes. Thank you.

14 THE COURT: How were you going to produce this? Were
15 you going to use search terms? You mentioned three people
16 who would be able to answer questions. And I assume we're
17 covering both financial information and substantive
18 information.

19 Am I correct? Or, what?

20 MR. BRUN: Correct. And in these cases -- again,
21 it's correct, both technical and financial information. In
22 these cases it's not hard to identify the source code and
23 produce that. That's what's going to determine what the
24 products actually do. I have not heard or seen anything
25 requesting the use of search terms and things of that nature.

1 I don't recall ever doing that in a patent case. The
2 technical documents are relevant.

3 THE COURT: Let me make a suggestion here, before you
4 get into the question of whether search terms would be
5 necessary, and whether -- I think at this point, Mr. Stern,
6 search terms are usually necessary, and we're talking about
7 voluminous documents, you know. So you're going through a
8 company's records and it's hugely -- a huge amount of
9 documentation. So you do need search terms to cull them out.
10 Why don't you wait and see what you're going to get and see
11 if you need to go into search terms, you know? And maybe
12 even take a couple of depositions and see if, indeed, you're
13 dealing with documents that would require you to get search
14 terms. Okay?

15 What do you think about that? It's October 15th. It's
16 only two weeks away.

17 MR. STERN: Understood, Your Honor. We were just
18 trying to come up with a reasonable way to remedy any issue
19 counsel for the defendant has raised, with respect to the
20 "all."

21 In other words, we understand that in certain instances
22 there are identifiable folks that have the financial
23 information, that can access it in essentially a located
24 storage area, and they could just produce those spreadsheets.
25 Then there are other individuals in the sales and marketing

1 department that have the business plans and advertising
2 information for the accused products. We were just trying to
3 suggest a way, that we understand has been used in prior
4 cases, and we have experience with, that kind of meets that
5 equilibrium.

6 But to the extent the court wishes that we should just
7 wait until October 15th, and then should there be any issues,
8 we'll raise it at that point, that is acceptable to plaintiff
9 WSOU.

10 Thank you, Your Honor.

11 THE COURT: All right. I may be speaking for
12 Mr. Brun, but I sort of interpreted his overbroad objection
13 was going to the other products that might contain these that
14 were not specifically named.

15 I didn't hear him going to the "all." I had the feeling
16 that with the limitation we've already imposed, he was
17 comfortable, even though the word "all" was in there.

18 What about that, Mr. Brun? Are we going to have problems?
19 I mean, do we need to deal with it at this point, or what?

20 MR. BRUN: We do not.

21 And so the one thing that I haven't had a chance to
22 address yet, because we got onto the accused-product
23 discussion, that we're going to defer until there have been
24 some depositions on the actually identified products, the
25 October 15th date and what we should do then.

1 So one of the things that -- one of the defects in what
2 we've done so far, as far as between the parties to try to
3 meet and confer, is there has been no reasonable meet and
4 confer and attempts to narrow.

5 It doesn't surprise me that on this call today counsel has
6 given some examples and been more specific about what it is
7 that they're looking for with respect to the technical
8 documents. The range of technical documents -- and, again,
9 it's the definitions that they imposed within these requests
10 that make them just so unwieldy, and we've asked several
11 times to just sit down with us and tell us what they're
12 looking for, some specific documents, and then we would go
13 search for that, if we all -- once we all agree what the
14 scope is.

15 To have F5 and their engineers do this piecemeal, is
16 asking too much from F5, before counsel even sit down with us
17 and try to narrow these requests.

18 So what I would suggest, before October 15th, is, one, we
19 will be producing all the names. We will have made the
20 source code available by then. We will have produced,
21 hopefully, costs-of-goods-sold information. I will keep
22 counsel informed as to that process. That is something
23 that's taking dozens of people hours.

24 But in addition to that, and parallel, for the request
25 that counsel believes that they haven't received sufficient

1 documents, it would be helpful, Your Honor, if you would
2 instruct the parties to actually meet and confer, narrow the
3 request to specific types of documents that we can discuss,
4 identify, and that I can go to our client, who then can go to
5 their engineers, who are very, very busy, and ask one time,
6 do it right the first time, so we don't have to go back and
7 revisit it again.

8 And so then we could show up on the 15th, and not only we
9 can tell you what we've produced, we can tell you what we're
10 going to produce, and what we've agreed to with respect to
11 technical documents, and with respect to financial documents.
12 Those technical documents would include, for example, as
13 counsel has mentioned, you know, specific types of software
14 architecture documents that do certain things.

15 The way the requests are written now, it just says
16 "general architecture documents, reference material,
17 high-level requirement design documents, test plans," things
18 like that, that don't give any guidance as to what F5 should
19 be looking for, what they should be producing. And if we
20 make the decision on our own what's responsive and produce
21 it, there's no question that we'll be here again, because
22 there will be more pushing by WSOU for additional documents.
23 And we've experienced that already with respect to an
24 interrogatory response.

25 THE COURT: I hear you, Mr. Brun. But the

1 distinction you are making between what you heard on this
2 phone call and the way in which the request is worded,
3 doesn't sound terribly different. What is it that you think
4 has become clearer? They asked for architectural documents
5 on the software.

6 MR. BRUN: I want to say what we heard on the call
7 has not made it clearer, but it is still more than what we've
8 done so far. There has not been any effort to narrow these
9 requests, at all. There needs to be some actual meet and
10 confer, that your standing order requires, that Rule 37
11 requires, to try to identify specific-type documents, and
12 that provide the information that they're looking for. I
13 mean, that's the key point.

14 THE COURT: Okay. Mr. Stern, let me ask you
15 something: Do you think that you all -- I don't mean you
16 alone, but you and your team -- would be able to sit down and
17 set forth, at least a preliminary first go-around, after you
18 get these -- it may open new doors that you need -- but at
19 least a preliminary set of documents that you want? I mean,
20 you were pretty specific to me about the software, the
21 architectural software.

22 Analogous to that, do you think you could do that?

23 MR. STERN: Sure, Your Honor. In fact, we've created
24 a list, in response to counsel for F5's e-mail to Your
25 Honor's law clerk, laying out the categories. There are

1 about seven categories where we've listed the specific types
2 of documents that we're looking for in those categories.
3 We've actually had meet and confers, you know. I disagree
4 with counsel for F5's rendition of what has happened during
5 the meet and confers. I don't want to bore Your Honor with
6 that. But we've gone through all this. We've asked for
7 these types of information. We've suggested that counsel for
8 defendant F5, you know, go to the relevant custodians and
9 essentially locate files, to remedy any issue about the word
10 "all."

11 We've made these suggestions. But I think they're written
12 out, and I think it's plain English the way I'm describing,
13 because, quite frankly, those are the notes I'm using to
14 speak with Your Honor during this call. So that's what we've
15 listed. Mr. Brun, I believe, has received that e-mail from
16 yesterday evening that has those categories. I think that
17 should remedy the issue.

18 With respect to specific technical documents or getting
19 any more granular than that -- I think we've gotten
20 granular -- but, you know, F5 is the one that has these
21 documents in their possession, custody and control. I don't
22 know what they have, from a technical-documents standpoint.

23 THE COURT: I don't think he's concerned with -- I
24 think technical documents may be something that all of you
25 understand. It sounds to me like you should. But I think in

1 categories beyond that, if there's anything.

2 Look, why don't you try the list. I, frankly, have not
3 looked at that list. It came in last night, probably --
4 remember, I'm three hours behind you, so I didn't even look
5 at it. But why don't you -- I'm sure now defendant has it,
6 and they probably didn't have time to look at it either. But
7 this is a little -- something that should be done. I can't
8 -- you know, counsel, at least on this phone call with me,
9 sound knowledgeable and cooperative, and reasonable about how
10 to get this case going. So I am going to make a suggestion
11 that, Mr. Brun, you work with the list that he's providing.
12 If it's not clear enough, talk to each other.

13 It sounds to me like, you know, you're counsel who have
14 dealt with patent cases enough so that you understand what
15 you're talking about, and if you say: I don't know what you
16 mean by this, then Mr. Stern can say: This is what we mean,
17 and you can get this done.

18 I think the more you get done by October 15th, the better
19 off it should be. So why don't you both look at that list,
20 see how far it takes you. If you really are still in
21 trouble, you can call me back. I'm not encouraging that, by
22 any means. Don't think for a minute I'm inviting you back.
23 But I'd like you to get a list, to understand where you're
24 going. And if it turns out that you can't get it, all of it
25 done by October 15th, once you go through the list, set a new

1 date by which you will get it done, you know. The end of
2 October for some of it, and October 15th for some of it.

3 I think it's important to get enough done by October 15th
4 so that you can start taking depositions. Because that's
5 where you're going to learn a lot more, I'm sure, Mr. Stern.

6 Is that a path that you can proceed with?

7 MR. STERN: Yes, Your Honor. That is definitely a
8 path we can -- WSOU can proceed with.

9 One minor point I'd like to mention is on the
10 interrogatories. We've propounded an interrogatory to
11 defendant F5 that for each accused product -- and let's say
12 for these purposes, moving forward with Your Honor's
13 guidance -- for those accused devices that have actually been
14 listed in the primary infringement contentions, we've asked
15 for defendant to identify, by serial number, and part number,
16 or whatever names that they have for these products, whether
17 they've changed the series on them, or not, to identify what
18 the names, the exact names and how defendant F5 refers to
19 those products, and the different variations of those
20 products over the years, because we're talking about a period
21 from 2014 through 2021. And we think that would actually go
22 a long way in kind of remedying these issues as well, knowing
23 that we're getting the information, at least now with respect
24 to those products that were specifically identified.

25 THE COURT: Well, as long as we're limiting it to the

1 ones that are specifically identified, Mr. Brun, I assume
2 that you have no problem doing that, right?

3 MR. BRUN: That's probably correct. I haven't -- I
4 don't have that interrogatory in front of me. We can talk
5 about that in our meet and confer. But, generally speaking,
6 version numbers are different. Again, version numbers,
7 whether it's hardware, software, through the damages period,
8 that's generally produced. So I agree, I am sure that's
9 something that we can work out.

10 And then just one final point on the list, Your Honor. So
11 here is the issue with the list, and let me just read you
12 one, it's two-lines long. And, again, the issue here is the
13 list are broad categories of documents, without a statement
14 as to what they're looking for.

15 So Item No. 3 on the list. It says: Business and
16 marketing plans, projection reports and presentations,
17 including promotions, advertising projections and awards
18 recognitions. So, one, it's not limited to the particular
19 products. We don't know whether -- you know, for the PEM.
20 We don't know whether counsel is going to suggest that any of
21 these types of documents are relevant for other products,
22 because they're in the module. We don't know what their
23 position is.

24 It would be helpful for each of the categories. And,
25 again, this is information that we've asked for, because the

1 categories are so broad, it would be helpful to understand
2 what it is they're trying to -- what is the information
3 they're trying to get. It's not just the broad category of
4 documents.

5 So in the meet and confer, we need help identifying and
6 understanding what it is that they think is relevant, and
7 what it is that's in these documents. And then we can look
8 for documents that have that information, once we agree that
9 that information is relevant and proportional. But what
10 they're looking for --

11 THE COURT: Doesn't it help -- doesn't it help to
12 know that we're limiting everything to the specified
13 documents, for now? The ones that are set forth. Does that
14 help?

15 MR. BRUN: So in our meet and confer, if they agree
16 to doing that -- but I'll give you an example. There's
17 another category, Category 5, that requires licensing
18 policies and licensing, again a high-level, royalty and other
19 settlement and joint-venture documents -- I have no idea what
20 joint-venture documents could be relevant here -- including
21 any rates of payments.

22 So for all I know, counsel could be arguing that a
23 licensing agreement or a settlement agreement relating to or
24 covering one of the other products that's in our module,
25 could somehow be relevant to the products that are actually

1 accused here. So we just don't know that. If counsel is
2 going to say --

3 THE COURT: Well --

4 MR. BRUN: Go ahead, Your Honor.

5 THE COURT: I thought the general consensus was that
6 we were limiting things to the accused products now. That
7 anything pertaining to other products that might contain the
8 software or the modules would have to wait until later, until
9 after there's a decision on infringement. So why wouldn't
10 that same ruling apply to all of these? I mean, he wrote
11 these requests before we talked about it. But I'm assuming
12 that we've all agreed that this is all going to be limited --
13 any royalty agreements or licensing agreements are only going
14 to be licensing agreements that apply to the accused
15 products, right?

16 MR. BRUN: And that's very helpful. And if that's
17 going to be considered now, to satisfy these requests, my
18 expectation is is that counsel was asking for a lot more than
19 that, but if that's going to be --

20 THE COURT: He wrote that list last night before we
21 had this discussion.

22 So I assume, Mr. Stern, that we're going to set the same
23 parameters for the documents on your list, correct?

24 MR. STERN: Yes, Your Honor.

25 THE COURT: Okay.

1 Does that help, Mr. Brun?

2 MR. BRUN: That certainly does help. And I do still
3 think that you've instructed us we should meet and confer
4 over these issues, and the interrogatory that Mr. -- that
5 counsel has identified. And so -- and then we can show up on
6 the 15th, with an identification of what has been produced,
7 and also what we've agreed to produce. And hopefully -- and
8 that shouldn't, in our opinion, require any additional
9 directions from the court. We should be able to get this
10 done.

11 THE COURT: Hopefully for me, too. I feel the same
12 way.

13 MR. BRUN: Well, maybe I'm too optimistic. But I'm
14 trying.

15 THE COURT: No. I'm going to suggest that you meet
16 and confer, and go through each one of these, with the
17 court's ruling in mind. And if at the -- I hate to issue an
18 invitation like this, because I really do not enjoy these
19 discovery conferences, but I do think they're case shaping
20 and they have to be done.

21 So what I'm going to say is if you narrow it down and
22 there are one or two that you can't figure out, you can't
23 agree on what it means, even with the court's guidance, that
24 we should put some of these things over until after there's
25 been a determination of infringement or not.

1 You know, many of these cases just bifurcate a lot of this
2 stuff. And in a sense, that's what I'm suggesting you do,
3 that you work with what's relevant now, and not overextend,
4 with the understanding that there may be a second round of
5 discovery.

6 But why don't you do this: Meet and confer. Go through
7 the document requests, the interrogatories, and if there are
8 any -- hopefully there would only be one or two that you
9 can't agree on -- you can arrange another conference with me,
10 and I'll help you. But I think I've given you enough
11 guidance, and you both sound very savvy about this stuff. So
12 I have a feeling you can work it out. And I won't hear from
13 you again.

14 But I don't mind if I do. Okay? I'm here to help you
15 get, what sounds like a fairly complicated case -- I want it
16 to get going. So I don't want you to let a lot of time go by
17 and still not have done your discovery. Okay?

18 So call me back if you have a problem. But do try and sit
19 down and at least narrow it to maybe one or two areas. Okay?

20 MR. BRUN: Thank you, Your Honor. This is Shane Brun
21 for F5. Hopefully we don't have to contact you again with
22 any disputes. But I think we're still on the calendar for
23 the status report; is that correct?

24 THE COURT: Yes, you are. Yes, you are. You are.
25 Okay, Mr. Stern?

1 MR. STERN: Sorry, that was for the 15th? Is that
2 what we discussed?

3 THE COURT: Yes.

4 MR. STERN: Okay. Thank you, Your Honor.

5 THE COURT: We will try to address, summarizing what
6 just happened. But hopefully I won't hear from you again.
7 But meet -- well, wait a minute. Do you want to set a date
8 for the meet and confer, or are you going to do that
9 yourselves?

10 MR. BRUN: While we're on the phone, so we can get it
11 done sooner rather than later, counsel, I can make time
12 available on Monday. If we can find time on Monday, counsel
13 for WSOU and I will meet on Monday.

14 THE COURT: How about that?

15 MR. STERN: Yes.

16 THE COURT: Do you want me to set a time, or just say
17 plan to meet on Monday at a time mutually acceptable? Okay?

18 MR. STERN: Yes, Your Honor. That's acceptable.

19 MR. BRUN: Yes, that works for F5.

20 THE COURT: Okay. Counsel?

21 MR. BRUN: Sorry, Your Honor. Will we be receiving
22 an e-mail from the court setting a time for the October 15th
23 status call?

24 THE COURT: I don't think the -- as I understand it,
25 you were just going to do a status report. You didn't need a

1 call.

2 MR. BRUN: Okay. That would be fine. Thank you.

3 THE COURT: I think that's something that counsel do
4 together and submit to the court, an agreed status for the
5 rest of the case. Okay?

6 MR. BRUN: Perfect. Thank you very much.

7 THE COURT: You don't need me for that. Okay? Okay.
8 We'll get you an e-mail about this one though. Okay?

9 MR. BRUN: Your Honor, if I may, sorry to hold Your
10 Honor on the line, there's one more issue relating to the
11 protective order in the case.

12 There are about three sub-issues with respect to the
13 protective order that the parties raised in its initial
14 e-mail to the court that need to be resolved. Particularly,
15 given, if there's going to be a source code production.

16 THE COURT: Sure. Sure. What are those issues?

17 MR. BRUN: So, one issue is the printing of pages and
18 how many pages, both consecutively and in total, to be
19 printed, of the source code in each of the cases. The second
20 issue is the scope of a prosecution bar for plaintiff's
21 counsel. And the third issue is an acquisition bar, whether
22 it's necessary, and if so, the scope. We're ready to address
23 those issues for the court this morning -- or, sorry -- this
24 afternoon, if that's convenient for Your Honor.

25 THE COURT: Sure. Why don't we try to take care

1 them? What is the thing about the number of pages? Why
2 don't you go ahead.

3 MR. STERN: Sure, Your Honor. WSOU is seeking that
4 it be allowed to print 25 continuous pages, per accused
5 product, per patent, and 300 pages in total, per accused
6 product, per patent. We believe that we, given defendant F5
7 counsel's representation that the functionality is really in
8 the source code, we're concerned that if we limit it any
9 further, we may have issues in this case. And we would
10 prefer not to come back to the court with any additional
11 issues on page printing.

12 We believe that it's reasonable, and other courts have
13 held this way, that 300 pages, about 300 pages, sometimes
14 even 400, is reasonable. We believe there's at least one
15 case with F5 as a defendant that has 400 pages, where the
16 court has either ordered, or it was agreed. So we believe
17 that's a reasonable approach right now.

18 THE COURT: Mr. Brun?

19 MR. BRUN: Yes, Your Honor, for F5.

20 What counsel is asking for here is 300 pages per case, so
21 that's per patent. There are five patents. 1,500 pages of
22 source code. I'm not sure -- possibly the case that
23 Mr. Stern or counsel is talking about, I have a case with
24 Judge Alsup in San Francisco. We have a case -- in that
25 case, there are four patents involved in the case, so just

1 one less than here, and there's a total of 300 pages of
2 source code allowed, and ten consecutive pages.

3 But that also has a provision in it, as most protective
4 orders do, that if the plaintiff feels that it needs more,
5 the parties are ordered to meet and confer in good faith, and
6 either provide more -- whether it's more total documents or
7 more consecutive.

8 So, for example, if there's a particular software
9 functionality, or code functionality that's rolling over more
10 than ten pages, we would absolutely agree to produce that.
11 But these protections, again, what they're asking for is
12 1,500 pages of source code, of F5's source code. That's a
13 lot of pages of the crown jewels and most sensitive
14 information that F5 has. And that is a very large number of
15 documents.

16 But, again, there should be a provision in there that if
17 counsel, WSOU, come back to us and say they need more, we
18 will work with them on that in good faith. I don't see any
19 problems with that.

20 THE COURT: Hold on a minute. My deputy is telling
21 me our court reporter needs a break. Grant?

22 THE CLERK: No, Your Honor. We actually have --
23 myself and the court reporter do have another hearing with
24 Judge Pechman starting at 10 o'clock.

25 THE COURT: Well, we're going to wrap this up in a

1 few minutes.

2 THE CLERK: Okay, perfect.

3 THE COURT: So, I didn't quite get what you were
4 saying, Mr. Brun. You're objecting to the number of pages?

5 MR. BRUN: Both the number and the consecutive
6 printouts. Again, so I think in the case that I was
7 referring to --

8 THE COURT: Well, what were you going to give them on
9 the 15th? You were going to provide source code. What were
10 you planning to give them?

11 MR. BRUN: Oh, no. So the full -- we're going to
12 give them the full source code. What these pages refer to is
13 how many pages that -- while their expert is reviewing the
14 source code -- how many actual hardcopy pages that the source
15 code they can print out.

16 So the source code itself is on a computer in a conference
17 room that has no external access. This has to do with how
18 many pages they can print out, and how many consecutive pages
19 they can print out that will cover -- that actually shows how
20 a particular functionality is implemented.

21 THE COURT: You know what, guys, I can't believe you
22 can't work this out.

23 MR. BRUN: I can't either.

24 THE COURT: Mr. Stern, really, you don't need me.
25 What do you want me to tell you, ten pages, 15 pages? I want

1 you to try to work it out. Okay?

2 MR. STERN: Understood, Your Honor.

3 THE COURT: All right. Do we have time, Grant,
4 before you guys have to disappear, to do the other two
5 problems?

6 You said there were two more problems under the protective
7 order.

8 MR. BRUN: Yeah, so if I may, Your Honor, this is
9 Shane Brun with King & Spalding. Can I address those first?

10 THE COURT: Yes.

11 MR. BRUN: So, the first one is an acquisition bar.
12 And so what that means is -- and actually let me ask, a
13 threshold question there is, should someone on counsel's
14 team, a WSOU attorney, who has access to and reads F5's
15 source code, should they be able to use that source code to
16 acquire patents that then could be used to sue F5? So I
17 believe that any reasonable person would agree that the
18 answer to that is, no. And that's all we're asking for.
19 It's a routine aspect.

20 THE COURT: Okay. Mr. Stern, you're not really
21 asking for permission to do that, are you?

22 MR. STERN: No. We're not asking for permission to
23 do that, Your Honor.

24 I think the issue really comes down to, there are numerous
25 provisions, or at least one main provision in the protective

1 order that has limited use. Now, attorneys and their
2 consultants have always been bound by the limited use, and
3 that any confidential information that we receive or see
4 cannot be used for any other purpose.

5 So we, as usually is the case, are agreeing to be bound by
6 that, that we're not going to use F5's -- quite frankly, I'm
7 a little taken back -- but we agree, we're not using F5's
8 source code or highly confidential information in any way
9 outside of this matter.

10 But what F5 is seeking is something far more expansive
11 than other protective orders we've seen. We don't usually
12 see protective orders with acquisition bars. And even if we
13 do, it's usually limited to the party itself. In other
14 words, we could potentially agree, if Your Honor so wishes,
15 to include an acquisition bar, where counsel at Kasowitz who
16 reviews the source code, could not advise WSOU on
17 acquisitions.

18 But going beyond that, I think, is unnecessary and
19 unproductive.

20 THE COURT: Wait a minute, you just agreed that WSOU
21 wasn't going to be using the source code for anything.

22 MR. STERN: Definitely not. Definitely not, Your
23 Honor. Definitely not.

24 THE COURT: Well, what's the problem with putting
25 some version of that into the protective order?

1 MR. STERN: Understood.

2 So what defendant F5 is seeking is to bar the Kasowitz
3 firm, or its consultants, from assisting anyone else besides
4 WSOU in relation to any acquisition. That is more so the
5 issue and the scope --

6 THE COURT: Ever? Any acquisition in the world? Or
7 any acquisition that just relates to this software?

8 MR. STERN: That relates to this software. But also
9 the time period. Defendant F5 is seeking a three-year bar as
10 well. So we're okay with Your Honor having an acquisition
11 bar in place that's limited to counsel for WSOU, should
12 anyone see highly confidential information, from advising
13 WSOU. That could be acceptable. But I think going outside
14 that is far expansive, and I haven't seen that.

15 THE COURT: I don't understand. It's not just
16 counsel, they're talking about consultants, experts, right?

17 MR. STERN: Agreed. Agreed. For all that class of
18 individuals. To the extent an expert here, or consultant, or
19 anyone at WSOU sees any highly confidential information
20 that's technical, agreed, they can use that for acquisitions
21 in the area of the scope of the patent. But not outside
22 WSOU.

23 THE COURT: So you're agreeing, then?

24 MR. STERN: Yes. I think the distinction is whether
25 consultants can consult with other companies relating to

1 that.

2 THE COURT: At all? Relating to these patents, or
3 any patent?

4 MR. STERN: It's any patent, within the scope or
5 related field, is what defendant F5 is looking for. That's
6 more of the issue, Your Honor.

7 THE COURT: Well, Mr. Brun, you're not trying to keep
8 them from going into any patents, are you? You're just
9 trying to go to the ones that are involved in this lawsuit,
10 right?

11 MR. BRUN: Right. The way these provisions are
12 written, it's related to the patents in lawsuit or related in
13 the field, and the field is defined. And so, again, what's
14 -- and what counsel is agreeing to here -- so, WSOU, their
15 business is to acquire patents and file lawsuits. That's
16 their revenue model. There are other companies like that.
17 And if there's an expert in this case that has F5's source
18 code, and has that information, he or she can't just unlearn
19 that information. And if they're working with another
20 non-practicing entity, not WSOU, again, they should be barred
21 for a certain period of time from consulting with respect to
22 the acquisition of patents in the field in which F5's modules
23 operate.

24 THE COURT: Okay. Mr. Stern, that sounds reasonable
25 to the court. That sounds reasonable to the court. So, I

1 think that resolves your problems with the protective order.
2 Right?

3 MR. BRUN: There's the prosecution bar, Your Honor.

4 THE COURT: What's that?

5 MR. BRUN: Once again, it's in almost every
6 protective order in a patent case. So what happens in patent
7 cases often, is that the defendant will file --

8 THE COURT: Who is speaking?

9 MR. BRUN: I'm sorry. I meant to do that again.
10 Shane Brun is speaking.

11 THE COURT: Okay. Go ahead.

12 MR. BRUN: So, in a lot of patent cases the defendant
13 will file a request with the patent office to review the
14 patents for validity. It's called, these days it's --

15 THE COURT: Yeah. Right.

16 MR. BRUN: And there is generally, because, again,
17 it's for attorneys and consultants, experts, who have access
18 to the source code, so that they know the specific operation
19 of F5's products and the modules, that they can't -- those
20 attorneys with that information, similar to the acquisition
21 bar, can't participate in that sort of inter partes review in
22 the patent office, where the scope of the claims, whether it
23 be through an interpretation, or an argument, or an actual
24 amendment of the claims, is made. It gives an advantage to
25 that party over F5, just because of their access to the

1 source code that they shouldn't have. It's unfair to F5.
2 And, again, it's a standard provision in almost every
3 protective order.

4 THE COURT: Mr. Stern, what's the problem with that?

5 MR. STERN: Your Honor, Mr. Brun repeatedly states
6 that this is standard. It's not. We've entered into
7 numerous protection or prosecution bars where we're okay with
8 entering into such a bar, with a carveout to participate in
9 proceedings at the USPCO that do not concern amendments of
10 claims scope in it. So there is no issue in that way. We
11 don't participate in the actual amendment in any way, whether
12 it's conflicting or not.

13 In those invalidity proceedings, we want to be able to
14 defend the claim that those patents are alleged to be
15 invalid. That's all. It has nothing to do with amending the
16 claim scope.

17 To the extent counsel for F5 has made the argument that
18 allowing us to participate in such proceedings, because we
19 can make arguments to narrow the scope, those types of issues
20 come up all the time in claim construction. In fact, we're
21 going to have claim construction hearings in a couple months.
22 That could occur, you know, at that point. I highly doubt
23 it, but making arguments about --

24 THE COURT: Hold on. Well, for the time being let's
25 leave it in. And we'll worry about it -- you can raise this

1 again. If the issue really comes up and you're still arguing
2 about it, you can raise it later on. But for now, leave it
3 in. Okay?

4 MR. STERN: Understood. Thank you, Your Honor.

5 MR. BRUN: All right. Thank you, Your Honor.

6 THE COURT: We'll try to get you a minute entry. But
7 I think it's time to let our court reporter go for Judge
8 Pechman's hearing. Okay?

9 MR. STERN: Perfect. Thank you. Thank you for
10 staying on so long. It's very helpful.

11 THE COURT: Thank you, counsel. Good-bye.

12 (Adjourned)

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14 C E R T I F I C A T E

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16

17 I certify that the foregoing is a correct transcript from
18 the record of proceedings in the above-entitled matter.

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21

22 /s/ Debbie Zurn

23 DEBBIE ZURN
24 COURT REPORTER

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